

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



February 1, 2002

Ms. Maureen E. Ray  
Special Assistant Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711-2487

OR2002-0474

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158425.

The State Bar of Texas (the "bar") received a request for copies of various documents pertaining to a specified attorney and any disciplinary investigations concerning him. You state that you have provided the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.<sup>1</sup>

We note at the outset that the bar failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides in pertinent part that a governmental body that requests an attorney general decision must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request for information, submit to the attorney general a copy of the specific information requested or representative samples of the information, if a voluminous amount of information was

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

requested. *See* Gov't Code § 552.301(e)(1)(D). However, the bar did not provide us with information that is responsive to the request for the specified attorney's CLE hours and courses for the past three years within fifteen days of receiving the request for information.

When a governmental body fails to submit responsive information to us for review that it wishes to withhold from disclosure, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is some source of law that makes the information confidential or a demonstration that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). The bar claims that the requested information is excepted from disclosure pursuant to sections 552.101, 552.107 and 552.111 of the Government Code. However, sections 552.107 and 552.111 are discretionary exceptions to disclosure under the Public Information Act (the "Act") that do not constitute compelling interests sufficient to overcome the presumption that the requested CLE hours and course information are public.<sup>2</sup> Furthermore, because the bar did not submit a copy of this responsive information for our review, we have no basis for concluding that it is otherwise confidential by law under section 552.101 of the Government Code. Accordingly, we conclude that the bar must release all information that it holds that is responsive to the request for the specified attorney's CLE hours and courses for the past three years.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with rule 15.10 of the Texas Rules of Disciplinary Procedure.<sup>3</sup> We note that the rules of the bar have the same effect as statutes. *See* *Board of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex. 1994); *see also* *State Bar v. Wolfe*, 801 S.W.2d 202, 203 (Tex. App. - Houston [1st Dist.] 1990, no writ); *State Bar v. Edwards*, 646 S.W.2d 543, 544 (Tex.App.--Houston [1st Dist.] 1982, writ ref'd n.r.e.). Section 81.033(a) of the Government Code provides:

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<sup>2</sup> Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

<sup>3</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

All records of the state bar, except for records pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure, and records pertaining to the Texas Board of Legal Specialization, are subject to Chapter 552.

Gov't Code § 81.033(a). Rule 15.10 provides:

All communications, written and oral, and all other materials and statements to or from the Commission, Chief Disciplinary Counsel, the Complainant, the Respondent, and others directly involved in the filing, screening, investigation, and disposition of Inquiries and Complaints are absolutely privileged.

Tex. R. Disciplinary P. 15.10, *reprinted in* Gov't Code Ann., tit. 2, subtit. G app. A-1. However, rule 2.15 of the Texas Rules of Disciplinary Procedure provides:

All information, proceedings, hearing transcripts, statements, and any other information coming to the attention of the investigatory panel of the Committee must remain confidential and may not be disclosed to any person or entity (except the Chief Disciplinary Counsel) unless disclosure is ordered by the court. If there is a finding of Just Cause and any Sanction other than a private reprimand (which may include restitution and payment of Attorneys' Fees) imposed by agreement of the Respondent, all of the information, proceedings, hearing transcripts, documents, statements, and other information coming to the attention of the investigatory panel shall be, upon proper request, made public. Notwithstanding anything herein to the contrary, any action taken by a Committee to refer a matter to the Board of Disciplinary Appeals for attorney Disability screening and determination must remain confidential.

Tex. R. Disciplinary P. 2.15.

You state that the submitted information is contained in files which have either been dismissed by the investigatory panel or in which the panel has either not made a determination concerning just cause or has not offered a sanction. Based on our review of your arguments and this information, we find that rule 2.15 is inapplicable and agree that all of the information is privileged under rule 15.10. We note that the phrase "absolutely privileged" in rule 15.10 is synonymous with "confidential" in section 81.033. *See, e.g.*, Attorney General Opinion JM-1235 (1990); *see also* Open Records Decision Nos. 384 (1983), 375 (1983). Accordingly, we conclude that the submitted information is confidential under rule 15.10 of the Texas Rules of Disciplinary Procedure and is, thus, not subject to disclosure under the Act. *See* Gov't Code § 81.033(a).

In summary, the bar must release all information that it holds that is responsive to the request for the specified attorney's CLE hours and courses for the past three years to the requestor. The submitted information is confidential under rule 15.10 of the Texas Rules of Disciplinary Procedure and, thus, is not subject to disclosure under the Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

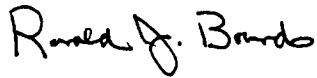
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large initial 'R'.

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 158425

Enc. Submitted documents

cc: Mr. Robert Haslam  
555 South Summit Avenue  
Fort Worth, Texas 76104  
(w/o enclosures)

CAUSE NO. GN200502

STATE BAR OF TEXAS,  
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL  
OF TEXAS,  
Defendant.§ IN THE DISTRICT COURT OF  
§  
§  
§ TRAVIS COUNTY, TEXAS  
§  
§  
§ 345<sup>th</sup> JUDICIAL DISTRICT**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff State Bar of Texas and Defendant Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. In compliance with the Tex. Gov't Code § 552.325(c), the requestor, Robert Haslam, was sent reasonable notice of this setting and of the parties' agreement that Plaintiff must withhold the information at issue. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information. The requestor has not informed the parties of his intention to intervene; neither has he filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, the CLE hours and courses of the specified attorney for the specified period of time, is confidential under State Bar Rules, Article 12 § 12, and, therefore, is excepted from disclosure under the PIA, Tex. Gov't Code § 552.101.

*Amelia Rodriguez-Ramirez*  
DISTRICT CLERK  
TRAVIS COUNTY, TEXAS

2. The State Bar must withhold from the requestor the information enumerated in paragraph 1 of this Agreed Final Judgment.

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this 24 day of Sept., 2003.

  
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PRESIDING JUDGE

APPROVED:

  
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